

CARL J. KUNASEK
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER



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ARIZONA CORPORATION COMMISSION

DATE: May 3, 2000

DOCKET NO.: T-03807A-99-0673

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Alicia Grantham. The recommendation has been filed in the form of an Order on:

NETLOJIX TELECOM, INC.
(CC&N/RESELLER)

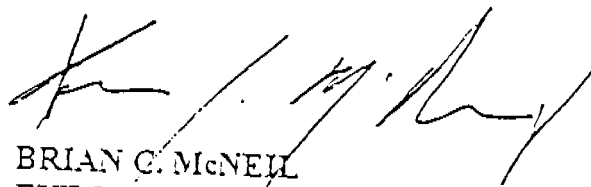
Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

MAY 12, 2000

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JUNE 6, 2000 AND JUNE 7, 2000

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250.


BRIAN C. McNEILL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK

CHAIRMAN

3 JIM IRVIN

COMMISSIONER

4 WILLIAM A. MUNDELL

COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 NETLOJIX TELECOM, INC., FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
INTRALATA/ INTERLATA
TELECOMMUNICATIONS SERVICES AS A
RESELLER EXCEPT LOCAL EXCHANGE
SERVICES

DOCKET NO. T-03807A-99-0673

DECISION NO. _____

ORDER

10 Open Meeting

11 June 6 and 7, 2000

12 Phoenix, Arizona

BY THE COMMISSION:

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On November 23, 1999, Netlojix Telecom, Inc. ("Netlojix" or "Applicant") filed with
17 Docket Control of the Arizona Corporation Commission ("Commission") an application for a
18 Certificate of Convenience and Necessity ("Certificate") to provide competitive intraLATA and
19 interLATA telecommunications services, except local exchange services, as a reseller within the
20 State of Arizona.

21 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
22 telecommunications providers ("resellers") were public service corporations subject to the
23 jurisdiction of the Commission.

24 3. In Decision No. 59124 (June 23, 1995), the Commission adopted A.A.C. R14-2-1101
25 through R14-2-1115 to regulate resellers.

26 4. Applicant is a Delaware corporation, authorized to do business in Arizona since 1999.

27 5. Applicant is a switchless reseller, which purchases telecommunications services from
28

1 Sprint, and/or IXC, and/or DCA.

2 6. On February 18, 2000, the Commissions Utilities Division Staff ("Staff") filed its Staff
3 Report.

4 7. In the Staff Report, Staff stated that the Applicant provided financial statements of its
5 parent company, Avtel Communications, Inc. for the year ended December 31, 1998. These financial
6 statements indicated assets of \$14.6 million, shareholders' equity of \$3.1 million, and negative
7 retained earnings of (\$16.5 million). Based on the foregoing, Staff believes that Applicant does not
8 have sufficient financial resources. Applicant stated in its application that it does not currently, and
9 will not in the future, charge its customers for any prepayments, advances, or deposits. If at some
10 future date, the applicant wants to charge customers any prepayments, advances, or deposits, it must
11 file information with the Commission that demonstrates the Applicant's financial viability. Staff
12 believes that if the Applicant experiences financial difficulty, there should be minimal impact to its
13 customers. Customers are able to dial another reseller or facilities-based provider to switch to
14 another company.

15 8. The Staff Report stated that Applicant has no market power and the reasonableness of
16 its rates would be evaluated in a market with numerous competitors.

17 9. Staff recommended that:

18 (a) Applicant's application for a Certificate should be approved without a hearing
19 pursuant to A.A.C. R14-2-1106B;

20 (b) Applicant's intrastate toll service offerings should be classified as competitive
21 pursuant to A.A.C. R14-2-1108;

22 (c) Applicant's competitive services should be priced at rates proposed by
23 Applicant in its most recently filed tariffs. The maximum rates for these services
24 should be the maximum rates proposed by Applicant in its tariffs. The minimum rates
for applicant's competitive services should be Applicant's long run incremental costs
of providing those services as set forth in A.A.C. R14-2-1109;

25 (d) In the event that the Applicant states only one rate in its tariff for a competitive
26 service, the rate stated should be the effective price to be charged for the service as
well as the service's maximum rate; and

27 (e) Applicant should be required to comply with the Commission's rules and
28 modify its tariffs to conform with the rules if it is determined there is a conflict

between Applicant's tariffs and the Commission's rules.

10. By Procedural Order dated March 29, 2000, the Commission set a deadline of April 28, 2000, for filing exceptions to the Staff Report; requesting that a hearing be set; or requesting intervention as interested parties.

11. On February 18, 2000 and March 24, 2000, the Applicant filed affidavits indicating that it published notice of its filing in all counties where service is to be provided pursuant to A.A.C. R14-2-1104.

12. No exceptions were filed to the Staff Report, nor did any party request that a hearing be set.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold intraLATA and interLATA telecommunications services is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate for providing competitive intraLATA and interLATA telecommunications services, except local exchange services, as a reseller in Arizona.

6. Staff's recommendations in Findings of Fact No. 9 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the Application of Netlojix Telecom, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive intraLATA and interLATA telecommunications services, except local exchange services, as a reseller shall be and the same is hereby granted, except that Netlojix Telecom, Inc., shall not be authorized to charge customers any prepayments, advances, or deposits. In the future if Netlojix Telecom, Inc., desires to

1 initiate such charges, it must file information with the Commission that demonstrates the Company's
2 financial viability or establish an escrow account equal to the amount of any prepayments, advances,
3 or deposits. Staff shall review the information provided and file its recommendation concerning
4 financial viability within thirty days of receipt of the financial information, for Commission approval.

5 IT IS FURTHER ORDERED that Netlojix Telecom, Inc. shall comply with the Staff
6 recommendations set forth in Findings of Fact No. 9.

7 IT IS FURTHER ORDERED that Netlojix Telecom, Inc. shall file a complete set of tariffs
8 within 30 days from the effective date of this Decision.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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12 CHAIRMAN

COMMISSIONER

COMMISSIONER

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15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of
19 Phoenix, this ____ day of _____, 2000.

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21 _____
22 BRIAN C. McNEIL
23 EXECUTIVE SECRETARY

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21 DISSENT _____

22 AG:bbs

SERVICE LIST FOR:

NETLOJIX TELECOM, INC.

DOCKET NO.:

T-03807A-99-0673

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